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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,353	10/16/2001	Mark Day	3330/50	6716
29858	7590	01/11/2006	EXAMINER	
BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP			PHAN, JOSEPH T	
900 THIRD AVENUE			ART UNIT	
NEW YORK, NY 10022			PAPER NUMBER	

2645

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/982,353	<b>Applicant(s)</b> DAY, MARK	
	<b>Examiner</b> Joseph T. Phan	<b>Art Unit</b> 2645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-18 rejected under 35 U.S.C. 102(e) as being anticipated by Simon et al., Pub. No. US 2003/0087652 A1.**

Regarding claims 1 and 10, Simon teaches a method and program code for informing remote clients as to the presence status of a device, the method comprising: recording a presence status of a first device to create an observed presence profile that comprises information regarding the presence status of the device over a period of time(*page 1 para 0008-0009, page 2 para 0018-0019, and page 3 para 0039*);

comparing the observed presence profile with one or more model presence profiles that represent an approximation of the presence status of the device to compute a closest matching model presence profile and transmitting information representing the

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closest matching model presence profile to one or more devices(*page 3-4 para 0040-0050 and page 6 para 0103*).

Regarding claims 2 and 11, Simon teaches the method and program code of claims 1 and 10, the method comprising:  
dividing a block of time into one or more discrete time periods, recording the first device's presence status over the time period; and creating an observed presence profile from the first device's recorded presence status(*page 2 para 0019 and page 6 para 0106*).

Regarding claims 3 and 12, Simon teaches the method and program code of claims 1 and 10 comprising comparing the observed presence profile with the model presence profiles when requested by the one or more devices(*page 6 para 0101-0103*).

Regarding claims 4 and 13, Simon teaches the method and program code of claims 1 and 10 comprising comparing the observed presence profile with the model presence profiles according to a schedule (*page 6 para 0106*).

Regarding claims 5 and 14, Simon teaches the method and program code of claims 1 and 10 wherein the step of transmitting is executed when requested by the one or more devices(*page 3 para 0039-0042*).

Regarding claims 6 and 15, Simon teaches the method and program code of claims 1 and 10 wherein the step of transmitting is executed according to a schedule(*page 6 para 0106*).

Regarding claims 7 and 16, Simon teaches the method and program code of claims 1 and 10 wherein the step of transmitting information comprises transmitting a

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status code representing the closest matching model presence profile(*page 7 para 0107-0111*).

Regarding claims 8-9 and 17-18, Simon teaches the method and program code of claims 1 and 10 comprising applying a pattern detection algorithm(Fast Fourier Transformation) to compare the observed presence profile with one or more model profiles to compute the closest matching model presence profile(*page 7 para 0107-0111; using FFT for pattern detection is a design choice as it is old and well known*).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph T. Phan whose telephone number is (571) 272-7544. The examiner can normally be reached on Mon-Fri 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 23, 2005 JTP

*JTP*

  
**GERALD GAUTHIER**  
PATENT EXAMINER